

HOUSE BILL 2585

By Moon

AN ACT to amend Tennessee Code Annotated, Title 2,
Chapter 20 and Title 2, Chapter 5, relative to
elections.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-20-101(b), is amended by adding
the following subdivisions:

() "Performance audit" means a review of the procedures followed to conduct
the election;

() "Risk-limiting audit" means a protocol which checks a random sample of
ballots chosen by statistical methods;

() "Traditional audit" means a protocol which requires bipartisan teams of
election officials to hand count a number of randomly chosen ballots;

SECTION 2. Tennessee Code Annotated, Title 2, Chapter 20, is amended by adding
the following new section:

The coordinator of elections may issue guidelines to be followed by election
officials in conducting post-election audits.

SECTION 3. Tennessee Code Annotated, Section 2-20-103, is amended by deleting the
section and substituting:

(a)

(1) The secretary of state shall randomly select county election
commissions that must conduct an audit after each August and November
election.

(2) The selection must occur on election day, and the coordinator of elections shall notify the selected county election commissions. County election commissions shall provide public notice of the time and location of the audit at least forty-eight (48) hours before the audit is conducted.

(3)

(A) After each August election, the secretary of state shall select at least three (3) counties to audit.

(B) After each November election, the secretary of state shall select at least six (6) counties to audit.

(4) As a pilot program after the May, August, and November 2022 elections, a county having a population of not less than two hundred forty-seven thousand seven hundred (247,700) nor more than two hundred forty-seven thousand eight hundred (247,800), according to the 2020 federal census or a subsequent federal census, must be audited by such county's election commission.

(5) The secretary of state shall select the audit methodology to be used in each selected county, from either a traditional tabulation audit, risk-limiting audit, or performance audit.

(6) Staff of the division of elections responsible for training on how to conduct the audits shall attend training regarding the United States government accountability office's generally accepted government auditing standards.

(b)

(1) Following each August and November election, a county election commission utilizing a precinct-based optical scanner and not selected for audit shall, in accordance with this section, conduct automatic mandatory audits of the

voter-verified paper ballots cast for the top race on the ballot, as described in subdivisions (b)(2) and (3).

(2) For a November election, the county election commission shall, in accordance with this section, conduct automatic mandatory audits for the president of the United States in a presidential election and the governor in a gubernatorial election.

(3) For an August election, the county election commission shall, in accordance with this section, conduct automatic mandatory audits for the highest race for county office.

(4) The county election commission may select one (1) or more additional races to be audited.

(5) The county election commission shall prepare for the audit in the following manner:

(A) Prior to each election, the county election commission shall first ensure that each optical scan tabulator used to count absentee by-mail ballots, early voting ballots, and election day ballots have been cleaned of debris;

(B)

(i) For counties having a population of less than three hundred thousand (300,000), according to the 2020 federal census or a subsequent federal census, the county election commission shall randomly select at least one (1) voting precinct in the county; and

(ii) For counties having a population of three hundred thousand (300,000) or greater, according to the 2020 federal

census or a subsequent federal census, the county election commission shall randomly select at least five (5) voting precincts in the county; and

(C) Before an optical scan tabulator may be used for the audit process, a printed tape of the election results must be generated and the electronic election results from the tabulator must be backed up onto a separate laptop. The optical scan tabulator must be cleared and reset. A zero tape from the optical scan tabulator must be printed before the tabulator may be used in the audit process. At least one (1) optical scan tabulator used to count election day ballots must be used to audit early voting ballots, and at least one (1) optical scan tabulator used to count early voting ballots must be used to audit election day ballots.

(6) After the polls close, and at a place open to the public, the county election commission shall randomly select the voting precinct or precincts, as appropriate, and shall select at least one (1) precinct-based optical scan tabulator used to count ballots during early voting to be used for the automatic mandatory audit. The commission shall announce to the public the results of the random drawing. The random selection utilized by the county election commission must ensure that all voting precincts in the county and all precinct-based optical scan tabulators used to count ballots cast during early voting have an equal chance of being selected.

(7) After the unofficial election results, excluding provisional ballots, have been determined and made public, a county election commissioner from the majority party and a county election commissioner from the minority party shall have all absentee by-mail ballots, all ballots cast during the early voting period,

and all ballots cast on election day locked and sealed pursuant to § 2-6-311 until the county election commission convenes to conduct the audit. The county election commission shall also lock and secure each precinct-based optical scan tabulator used in the election process until the county election commission convenes to conduct the audit.

(8) Before the election is certified, the automatic audit must be conducted in the following manner:

(A) At a time and place open to the public, the county election commission shall identify the ballot boxes containing the absentee by-mail ballots cast in the randomly selected voting precinct or precincts and identify the ballot boxes containing the election day ballots cast in the randomly selected voting precinct or precincts. The election commission shall include in the audit only those absentee by-mail ballots that were counted by an optical scan tabulator rather than by hand. A county election commissioner from the majority party and a county election commissioner from the minority party, personally holding the keys to such ballot box or boxes, shall unlock the ballot box or boxes;

(B) The election commission shall identify and remove from the respective ballot box or boxes each ballot cast in the absentee by-mail voting process in the selected precincts that were counted by an optical scan tabulator and each ballot cast on election day in the selected precinct or precincts;

(C)

(i) In auditing the precinct-based optical scan tabulator that had been used to originally count the early voting voter-

verified paper ballots, the county election commission shall remove the early voting ballots contained in the ballot box of the optical scan tabulator and shall verify the accuracy of the unofficial election results by inserting such early voting ballots into the randomly selected optical scan tabulator. The county election commission shall compare the results of the top race and each other race audited obtained during the automatic audit of such optical scan tabulator with the unofficial election results of the top race and each other race audited. The election commission shall publicly announce the results;

(ii) In auditing the absentee by-mail ballots that were counted by an optical scan tabulator, the county election commission shall take the absentee by-mail ballots from the randomly selected voting precinct or precincts and shall verify the accuracy of the unofficial election results by inserting the subject absentee by-mail ballots into a different precinct-based optical scan tabulator than that used to originally count the absentee ballots prior to certifying the election;

(iii) In auditing the election day ballots, the county election commission shall take the election day ballots from the randomly selected voting precinct or precincts and shall verify the accuracy of the unofficial election results by inserting the subject election day ballots into a different precinct-based optical scan tabulator than that used to originally count the election day ballots; and

(iv) To judge the accuracy of the unofficial election results, the county election commission shall compare the results of the top race and each other race audited obtained during the automatic audit with the unofficial election results of the top race and each other race audited obtained on election night. The election commission shall publicly announce the results; and

(D)

(i) If, as a result of the automatic audit, the county election commission finds that there is a variance of less than one percent (1%) between the unofficial election results of the top race and each other race audited and the automatic audit, no hand count audit is required and the county election commission shall certify the election results as originally determined;

(ii) If, as a result of the automatic audit, the county election commission finds that there is a variance of more than one percent (1%) between the unofficial election results of the top race and each other race audited and the automatic audit, the county election commission shall randomly select at least three percent (3%) of the voting precincts in the county. The county election commission may include the voting precincts previously audited. The county election commission must identify the ballot box or boxes from the selected voting precincts, obtain the ballots out of those ballot boxes, and then insert such ballots into a different optical scan tabulator than that used to originally count the ballots. In addition, the county election commission may conduct a manual

hand count of the same ballots subjected to the automatic audit described in this subdivision (b)(8)(D)(ii). The automatic audit or the manual hand count audit, if one is conducted, must be of the top race and each other race audited on the ballot in such voting precincts used in the expanded audit. The county election commission may expand the hand count to other races if a hand count is conducted. The county election commission shall publicly announce the results of the automatic audit and the manual hand count if a manual hand count is conducted;

(iii) If all of the ballots in a race are counted as part of the manual hand count audit, the results of the hand count audit must be used as the official results to be certified by the county election commission;

(iv) The results of a difference between precinct-based optical scan tabulations or the hand count audit must be available for use in an election contest filed pursuant to chapter 17 of this title; and

(v)

(a) A county election commission not selected for audit under subsection (a) and not required to conduct an audit under subsection (b) after the November election shall conduct a performance audit following the certification of each November election;

(b) The coordinator of elections shall distribute guidance to each county election commission of the procedures to conduct an audit following each election;

(c) The audit must include, but not be limited to, a review of the procedures for absentee by-mail ballots requested, transmitted, and returned;

(d) The secretary of state shall randomly select six (6) counties where the performance audit will be conducted by the division of elections; and

(e) Performance audits conducted by the county election commission must be completed by the ninetieth day after the election is certified. A report of the performance audit must be submitted to the secretary of state.

(c) For elections in 2022 and 2024, expenses incurred by a county election commission or its members in the performance of its audit duties under this title must be paid out of the state treasury upon the certification of the chair and secretary of the county election commission to the secretary of state; provided, that the secretary of state shall review the claim and only those items certified by the secretary of state to the comptroller of the treasury must be paid. County election commissions are eligible for a reimbursement of their actual costs, not to exceed fifty dollars (\$50.00) in audit set up costs per machine and thirty-five cents (\$0.35) per ballot audited.

SECTION 4. Tennessee Code Annotated, Section 2-5-207(b)(2), is amended by deleting the subdivision and substituting instead the following:

(2) Except for ballots authorized by state or federal law to be delivered electronically to qualified voters who are entitled to vote by absentee ballot, all absentee ballots must include a watermark approved by the coordinator of elections. The coordinator of elections may define the method and type of watermark to be placed on the absentee ballot and may authorize the use of invisible ink or pre-printed opaque images to produce the watermark. The watermark must be easily discernible for verification purposes by the absentee counting board.

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.